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No. 82

In the Supreme Court of the United States

OCTOBER TERM, 1949.

UNITED STATES EX REL. OTTO A. WILLUMEIT,
PETITIONER

v.

EDWARD J. SHAUGHNESSY, ACTING DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The opinion of the Court of Appeals (R. 13-16) is reported at 171 F. 2d 773. No opinion was rendered by the District Court (R. 11-12).

JURISDICTION

The petition for a writ of certiorari was filed on May 26, 1949, and certiorari was granted on June 27, 1949 (R. 17, 45). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Act of May 10, 1920, which provides that among the aliens subject to deportation if found to be undesirable residents are "all aliens who since August 1, 1914, have been or may hereafter be convicted" of certain specified offenses, applies to an alien who was a naturalized citizen when he was convicted but has since been denaturalized.

STATUTE INVOLVED

Section 1 of the Act of May 10, 1920, c. 174, 41 Stat. 593-594, 8 U.S.C. 157, provides:

> That aliens of the following classes, in addition to those for whose expulsion from the United States provision is made in the existing law, shall, upon the warrant of the Secretary of Labor, be taken into his custody and deported in the manner provided in sections 19 and 20 of the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States," if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States, to wit:
>
> (1) All aliens who are now interned under section 4067 of the Revised Statutes of the United States and the proclamations issued by the President in pursuance of said section under date of April 6, 1917, November 16, 1917, December 11, 1917, and April 19, 1918, respectively.

(2) All aliens who since August 1, 1914, have been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts, the judgment on such conviction having become final, namely:

(a) An Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," approved June 15, 1917, or the amendment thereof approved May 16, 1918;

* * * * *

STATEMENT

Petitioner was born in 1905 in the Province of Lorraine, then a part of Germany (R. 6, 9, 19). He first entered the United States in September 1925 on a German passport [1] for permanent residence here (R. 19). He was a German citizen at birth and continued in that status until September 16, 1931, when he was naturalized as an American citizen by a judgment of the Superior Court, Lake County, Indiana (R. 9, 22). Thereafter he made several trips outside the country (R. 19) and his last re-entry into the United States was at El Paso, Texas, on October 24, 1941 (R. 9).

In August, 1942, petitioner was convicted in the United States District Court for the District of

[1] His admission was charged, however, against the French quota (R. 14), since Lorraine at that time was *de jure* French territory.

Connecticut on his plea of guilty to a charge of violating Section 4 of the Act of June 15, 1917 (50 U.S.C. 34 [2]), by conspiring with others to violate Section 2 of that Act, which made it a crime punishable by imprisonment up to twenty years to transmit to an agent of a foreign country information relating to the national defense of this country, with intent or reason to believe that such information would be used to the injury of the United States or to the advantage of a foreign nation (R. 39, 21). On August 21, 1942, he was sentenced to imprisonment for five years (R. 39). He was released from service of this sentence in April 1946 (R. 21).

On June 9, 1944, a judgment was entered with the consent of petitioner, in the United States District Court for the Northern District of Illinois, cancelling his naturalization on the ground of illegality and fraud in its procurement (R. 33-37). By order dated May 23, 1946, the Attorney General ordered him removed from the United States as a "dangerous alien enemy," in accordance with 50 U.S.C. 21, and Presidential Proclamation No. 2655 of July 14, 1945, 10 Fed. Reg. 8947 (R. 41).

Subsequently, proceedings were instituted to determine whether petitioner was also subject to deportation. After a hearing before an Immigration Inspector and review by the Board of Immigration

[2] Now 18 U.S.C. 794. The punishment for a violation in time of war is death or imprisonment for not more than thirty years.

Appeals, both of whom made findings of fact, petitioner was ordered deported on the grounds: (1) that he is an undesirable resident, and, as an alien convicted of a violation of one of the acts of wartime legislation specified in the Act of May 10, 1920, c. 174, 41 Stat. 593 (8 U.S.C. 157), he is deportable under that statute; and (2) that he is an alien who re-entered this country in 1941 without a valid immigration visa, and therefore, is deportable under the Immigration Act of May 26, 1924 (8 U.S.C. 213, 214) (R. 10, 14).

A writ of habeas corpus was issued by the District Court for the Southern District of New York and, upon the petition, the return, and the record of proceedings before the officials of the Immigration Service, the writ was ordered dismissed (R. 10). The Court of Appeals for the Second Circuit affirmed the order of dismissal upon the ground that petitioner was properly deportable under the act of May 10, 1920, *supra* (R. 13-16). In view of the sufficiency of this one ground, the court deemed it unnecessary to pass upon the other grounds for his deportation and removal (R. 15).

SUMMARY OF ARGUMENT

A. The Act of May 10, 1920, does not expressly exclude from its provisions aliens who, at the time of their conviction, were naturalized citizens. The presence in the statute of the phrase "may hereafter be convicted" upon which petitioner relies as indicating a legislative inten-

tion that alienage and conviction must be contemporaneous, signifies merely that, in respect of the time of conviction, the statute shall operate prospectively as well as retrospectively. And no reason is apparent why Congress should have excepted from deportation an alien who not only committed one of the specified wartime offenses, but also fraudulently procured his naturalization. The crucial factor is the alien's *present* undesirability as a resident of this country. Under the express terms of the deportation statute, once petitioner was denaturalized, he was deportable because of the past conspiracy conviction regardless of his status at the time of the conviction.

B. If the statute should be construed to require that the alien must have been in that status at the time of his conviction, petitioner nevertheless is within its scope. The cancellation of his naturalization for fraud in its procurement operated to revoke his citizenship *ab initio*, thereby having the legal effect of rendering him an alien at all times.

ARGUMENT

Petitioner is Deportable Despite His Ostensible Status as a Naturalized Citizen at the Time of His Conviction

A. There is, of course, no doubt that power resides in Congress to exclude or expel any class of aliens whose presence in this country it deems harmful. *Bugajewitz* v. *Adams*, 228 U. S. 585, 591; *Ng Fung Ho* v. *White*, 259 U. S. 276, 280. Only a narrow question of statutory interpretation is presented

here. Petitioner impliedly concedes that deportation under the Act of May 10, 1920, is not confined to persons who were resident aliens when the statute was enacted nor to persons whose crimes were committed at or before that time.[3] But he urges that the statute is limited in this one respect: it does not extend to a person who was a naturalized citizen at the time of his conviction, although he has

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[3] The enactment of the deportation statute of May 10, 1920 (*supra*, pp. 2-3), was occasioned by the desire to deport as undesirable residents about 500 aliens who were then being held in internment camps as dangerous enemy aliens, and, in addition, to deport about 150 aliens who, during World War I, had been convicted of violations of the sabotage act, the espionage act, and various other so-called war statutes. H. Rep. No. 143, S. Rep. No. 283, 66th Cong., 1st sess. The legislation was initiated at the request of Attorneys General Gregory and Palmer who were concerned lest existing law be deemed inadequate for the expulsion of these alien enemies. H. Rep. No. 143 and S. Rep. No. 283, 66th Cong., 1st sess.; see *Ludecke* v. *Watkins*, 335 U.S. 160, 167, n. 12, 179-180. Although the statute was aimed at enemy aliens of World War I, it was couched in general language and thus applies to any alien who may be found within its terms. No time limit was placed upon its operation, and it has not been repealed; hence it has continued effective to the present, and reaches aliens who in World War II committed any of the crimes enumerated in the Act. Clearly, Congress and the executive branch have so regarded the reach of the statute. For example, in 1940, when Congress passed a bill (H.R. 6724, 76th Cong., 3d sess.) to expedite the deportation, among others, of aliens convicted of espionage and sabotage by providing for their automatic expulsion and thereby obviating the need for an administrative finding that they were undesirable residents, there was no suggestion that the 1920 statute had lost its vitality. See H. Rep. No. 829, S. Rep. No. 918, 76th Cong., 1st sess. The bill was vetoed by President Roosevelt because it included a provision for the mandatory deportation of habitual users of narcotic drugs. He explained, however, that ". . . Ample authority is found in the existing law for the deportation of aliens guilty of such activities for the Secretary of Labor [now the Attorney General, to whose direction and supervision the functions of the Immigration and Naturalization Service were transferred,

since been denaturalized for fraud in the procurement.

Petitioner's reliance is placed in part upon the relationship between the noun "aliens" and the words "may * * * be convicted" in the classifying phrase, "All aliens who since August 1, 1914 have been or may hereafter be convicted." He argues (Br. 7) that "There is no other grammatical possibility" but that "the alien must 'be' an alien at the time of conviction." This emphasis upon apparent grammatical construction seems strained. Certainly, if Congress had provided simply for the deportation of all aliens "who since August 1, 1914 have been convicted," an argument based upon grammar would have nothing upon which to rest. The phraseology would clearly cover, for example, a person who had been denaturalized in 1919 and, therefore, was an alien on May 10, 1920, when the statute was enacted, even though his conviction had occurred in 1915 while he was a naturalized citizen. And, in our view, the inclusion of the phrase, "may hereafter be convicted," served only to assure that, *so far as the time of the conviction* was concerned, the statute would operate prospectively as well as retrospectively to August 1, 1914;[4] it

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1940 Reorganization Plan No. V, 54 Stat. 1238, effective June 14, 1940] is already authorized to deport them if, after hearing, it is found that they are undesirable residents of the United States (U.S.C., title 8, sec. 157). Further legislation on this subject appears to be unnecessary and superfluous." Message from the President, H. Doc. No. 689, 76th Cong., 3d sess.

[4] A reference, apparently, to the beginning of World War I.

has no bearing either way upon the question of the criminal's status—i.e., whether he was an alien or naturalized citizen—at the time of his conviction. In any event, to paraphrase Mr. Justice Cardozo, dissenting in *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 439: "The meaning of a statute is to be looked for, not in any single word, but in all the parts together and in their relation to the end in view." And as Mr. Justice Holmes observed in another connection: "* * * the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down." *United States* v. *Whitridge*, 197 U.S. 135, 143.

Petitioner lays great stress upon an alleged requirement of alien status at the time of conviction. But if that factor is significant, the alien's status at the time of commission of the crime should be no less so. But no argument, even on the basis of grammatical construction, can be advanced that if an alien committed the specified offense while a naturalized citizen, and before conviction, was denaturalized, he would be outside the scope of the statute. Thus, if petitioner had violated the wartime statute in 1941, as he did, but his trial had been delayed until after he was denaturalized, his present contention would clearly be untenable. We submit that there is no sound reason for deducing a Congressional intention to distinguish between an alien whose commission of the crime and conviction antedated his

denaturalization and one whose denaturalization followed the commission but preceded the conviction. The test of present undesirability is equally applicable in both situations.

Petitioner asserts (Br. 9) that the grammatical construction urged by him is supported by the legislative history of the statute since "there is ample evidence that responsible members of Congress had in mind only aliens who had been convicted of crimes while aliens." But he relies solely on two statements, isolated from their context, made during the debate in the House. These expressions by Representatives Robsion and Gard were made in connection with an entirely different problem—namely, a proposal to postpone the deportation of enemy aliens whose property had been seized by the Alien Property Administrator, until their claims might be adjusted. These statements were not intended to, and do not, reflect any opinion whatever in respect of the requisite status at the time of conviction. "To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute * * *." *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 542. This is particularly true when the words upon which reliance are placed are not the words of the statute but of individual legislators addressing themselves to other problems.

Scant comfort can be derived by petitioner from the circumstance upon which he relies (Br. 9), that Representative Gard used the present tense in referring to the trial and conviction of aliens. If the use of a particular tense in the course of debate casts any light upon the reach of the statute (which we doubt in view of the undisputed fact (Pet. Br. 9) that the specific question was not raised at any time), it should be noted that the report of the debate in the House[5] is replete with statements by supporters of the bill in which the past participle "has been convicted" was used in reference to all aliens subject to the provision. See 58 Cong. Rec. 3362-3376. Typical is the statement of Representative Black, as follows (58 Cong. Rec. 3372):

> * * * What does this bill do? If I understand it correctly, it does not authorize the deportation of an alien merely because he has been an interned enemy alien; it does not authorize the deportation of an enemy alien, or any other alien, merely because he *has been convicted* of the violation of some of the acts which we passed in aid of the prosecution of the war and which are named in the several subsections of the bill. What it does do is to say to the Secretary of Labor, "If you find, after a hearing, that any interned enemy alien is an undesirable alien, then you shall have the right to enter judgment deporting him, or if

[5] There was no debate on the bill in the Senate. 59 Cong. Rec. 6444.

> you find that any alien in this country, whether from one of the enemy countries or not, *has violated* any of these war laws, such as trading with the enemy act, the espionage act, and others named in this bill, you shall have the right to also deport him after giving him a hearing and after finding as a fact that he is an undesirable resident of the United States." (Italics supplied.)

There is nothing in the legislative history of the Act of May 10, 1920, which shows that Congress considered the precise effect of the statute, one way or the other, upon denaturalized persons. The statute was aimed primarily at a group of about 650 aliens. See *supra*, p. 7, n. 3. It is not improbable, however, that this group included some aliens who were convicted of wartime offenses while they were naturalized citizens. The remedy of denaturalization was a familiar one in 1920 and had been resorted to in a number of cases during and immediately after World War I. See, e.g., *United States* v. *Wursterbarth*, 249 Fed. 908 (D. N.J.); *United States* v. *Kramer*, 262 Fed. 395 (C.A. 5); *Schurmann* v. *United States*, 264 Fed. 917 (C.A. 9); Annual Report of the Attorney General (1918), p. 39.[6]

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[6] "The practice of filing proceedings to cancel certificate of naturalization became widespread immediately after the 1906 Act went into effect. In the fiscal year 1907, there were eighty-six certificates cancelled; in 1908, there were four hundred and fifty-seven; and in 1909, nine hundred and twenty-one. During the thirty years following the effective date of the 1906 Act, more than twelve thousand certificates

Under a long-standing practice, denaturalized persons are included in the category of aliens subject to removal under the Enemy Alien Act of July 6, 1798, as amended (50 U.S.C. 21), if found to be dangerous enemy aliens. Petitioner agrees that this practice is authorized by law (Br. 10). And the Act of May 10, 1920, which was aimed primarily at the expulsion of alien enemies, was not designed to be more restrictive than the Alien Enemy Act. Indeed, the legislation was initiated to supplement the provisions of the latter statute. See letter of May 27, 1919, from the Attorney General to the Chairman of the House Committee on Immigration and Naturalization, 58 Cong. Rec. 3365. The reports of the House and Senate Committees (H. Rep. No. 143 and S. Rep. No. 283, 66th Cong., 1st sess.) stated, in identical language, that "the bill provides for the deportation as undesirable residents of two classes, as follows: (1) Those *alien enemies* at present interned as dangerous alien enemies; (2) Those *alien enemies* convicted of violation of various acts passed in connection with the war." (Italics supplied.)

Since the Alien Enemy Act, as amended, concededly includes denaturalized persons in the class of those "not actually naturalized," it is clear that the vital consideration in alien enemy

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of naturalization were cancelled on the ground of fraud or on the ground that the order and certificate of naturalization were illegally procured." Cable, *Loss of Citizenship*, pp. 4-5.

removal cases is the alien's *present* status—that is, his status as a dangerous enemy alien at the time his removal is sought to be effected. Similarly, therefore, under the Act of May 10, 1920, which, as we have seen, was intended to be as broad in its coverage of aliens as the Alien Enemy Act, an alien is subject to deportation notwithstanding his previous naturalization or his status at the time of his conviction.

Whether or not denaturalized persons were among the group whose presence prompted the legislation, the statute was couched in general language to cover future situations and persons as well as then existing ones and, therefore, it extends to any alien who may be found within its terms. See, *supra*, p. 7, n. 3. That the Congress in 1920 did not explicitly deal with the problem here presented is inadequate ground for denying application to a situation well within the general purpose of the statute as well as the legislative language. In *Barr* v. *United States*, 324 U. S. 83, 90, the Court stated: "* * * If Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators." The problem then is, "* * * which choice is it the more likely that Congress would have made?" *Burnet* v. *Guggenheim*, 288 U. S. 280, 285. Or, as stated recently in *Vermilya-Brown* v. *Connell*, 335 U. S. 377, 388:

> Under such circumstances, our duty as a Court is to construe the * * * [crucial words] as our judgment instructs us the lawmakers, within constitutional limits, would have done had they acted at the time of the legislation with the present situation in mind.

Since petitioner's contention that he may not be deported because he was a naturalized citizen at the time of his conviction is essentially an argument that, having obtained the status of a naturalized citizen by fraud he thereby is beyond the reach of the statute, the question here is whether Congress intended that he should enjoy an immunity which he, as an alien, would not have had but for the perpetration of the fraud.

No reason is apparent why Congress should have made an exception in favor of an alien who fraudulently procured his naturalization and while in the guise of a citizen committed a wartime offense. The crucial factor is petitioner's *present* undesirability to continue to be a resident of this country.[7] As the Court stated in *Mahler* v. *Eby*, 264 U. S. 32, 39: "Congress by the Act of 1920 * * * was, in

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[7] On this point the Board of Immigration Appeals stated (R. 21):

"* * * Respondent's conviction under the Act of June 15, 1917 is by itself enough to justify us in finding respondent to be an undesirable resident of the United States. *Mahler* v. *Eby*, supra. If additional evidence were necessary, and we do not think it is, this record contains ample evidence upon which a finding of undesirability can be made. There is undisputed evidence in this record that respondent was a member of the German-American Bund from September 1937 until its dissolution in December 1941. From 1939 on Respondent was the

the exercise of its unquestioned right, only seeking to rid the country of persons who had shown by their career that their continued presence here would not make for the safety or welfare of society." Certainly, petitioner's conviction in 1942 when he was a naturalized citizen is as much evidence of his present unfitness to continue to reside in this country as would be the conviction of an alien who had never procured citizenship. The probative force of the conviction on his desirability as a resident is no more dependent upon his status at the time of conviction than upon the continuance in effect of the wartime statutes for violation of which the aliens were convicted in *Mahler* v. *Eby, supra.* Here, just as in *Mahler* v. *Eby,* in which the wartime statutes had been repealed, the convictions retain all "probative force rightly belonging to them." 264 U. S. at 40. If anything, this is an *a fortiori* situation, for not only has the petitioner committed a wartime crime against this country but he did so while ostensibly owing the allegiance of a citizen. Moreover, not only did he commit the crime for which he was convicted but he also committed a fraud against the Government for which he was denaturalized.

In *United States ex rel. Brazier* v. *Commissioner of Immigration,* 5 F. 2d 162 (C.A. 2), it was urged

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Chicago unit leader of this un-American organization. In January 1945 the Attorney General found respondent to be potentially dangerous to the security of this country and ordered his internment. On May 23, 1946 the Attorney General directed respondent's removal from the United States. We find that respondent is an undesirable resident of the United States."

that the Act of May 10, 1920 was impliedly limited to instances where the crime had been committed within five years after the alien's entry into this country—the argument being that the 1920 statute had assimilated the limitation provisions of a prior deportation statute. But the court rejected this view, stating (5 F. 2d at 164):

> * * * it is clear from consideration of the nature of and occasion for the Espionage and Selective Service Acts, and the language of the act of 1920, that persons, who had been or might thereafter be actually convicted of offending against measures adopted only to preserve the life of the nation in time of war, were in a class by themselves, and that class was to be treated in a way of its own, not like other aliens who had not manifested aggressive hatred of the land they chose to inhabit.
>
> Men such as these relators had had no chance in time of peace to show how they would behave in time of war. They were typical of a class, which, if not discovered only under war conditions, rendered itself so markedly harmful to the national life in 1917-1919, that its members were singled out for removal from a community they evidently wished to injure or destroy. *No reason could or can be shown why the Congress should restrict removal to those who offended before they had perhaps time to become acclimated, and free those who by long residence had learned how to do the more harm. Length of years in residence only added to gravity of offense. Therefore it is reasonable to read the words of the 1920 act literally, and*

> *to hold, as we do, that aliens convicted under the statutes referred to may, if found undesirable, be deported at any time.* [Italics supplied.]

Support for the view that petitioner is deportable now even though at the time of his conviction in 1941 he was not subject to deportation may be found in analogous situations. In *Lapina* v. *Williams*, 232 U. S. 78, the Court held that the Immigration Act of 1907, which made deportable any alien found practicing prostitution within three years after entry into the United States, applied to an alien who engaged in prostitution upon return from a temporary sojourn abroad, despite the fact that she had been domiciled in this country for ten years prior to the enactment of the statute. In rejecting any implied exception in her favor, the Court said (232 U. S. at 91-92):

> Upon a review of the whole matter, we are satisfied that Congress, in the act of 1903, sufficiently expressed, and in the act of 1907 reiterated, the purpose of applying its prohibition against the admission of aliens, and its mandate for their deportation, to *all aliens whose history, condition or characteristics brought them within the descriptive clauses, irrespective of any qualification arising out of a previous residence or domicile in this country* * * * *None of these excluded classes* * * * *would be any less undesirable if previously domiciled in the United States.* [Italics supplied.]

In *Mahler* v. *Eby*, 264 U. S. 32, aliens detained for deportation under the Act of May 10, 1920, charged that the statute was an *ex post facto* law, because the offenses of which they were convicted, as well as the convictions, occurred before its passage. But the Court disposed of this argument with the observation that (264 U. S. at 39): "It is well settled that deportation, while it may be burdensome and severe for the alien, is not a punishment * * *." Cf. *Lauria* v. *United States*, 271 Fed. 261 (C.A. 2), certiorari denied, 257 U. S. 635.

Petitioner contends (Br. 12-13) that if he is subject to deportation "many once naturalized citizens, convicted while such, will logically be subject to deportation for a variety of offenses, whether they have lost their citizenship because of fraud or illegality or in other ways involving no moral blame." But we are concerned here, of course, only with the impact of one particular statute, the Act of May 10, 1920, upon a particular alien who has been convicted of conspiracy to commit espionage, denaturalized for fraud, and found, after hearing, to be an undesirable resident. Whatever considered Congressional judgment might be in the hypothetical cases propounded by petitioner (Br. 13-14), he suggests no basis for doubting, and there can be no doubt, that one who has been found guilty of the criminal and fraudulent acts which petitioner committed would be afforded no greater rights than an alien, never a citizen, who committed no fraud on the United

States. And since, as we have shown, *supra*, pp. 14-15, it is for this Court to determine, under circumstances like that here involved, what Congress would have done had it been faced with the precise problem that is now before the Court, it is not relevant that Congress might have decided differently when faced with a variety of other and different problems under different deportation statutes.

Under the statute here involved, aliens, including those who at one time held certificates of naturalization, can be deported only upon a showing of conviction of specified crimes and a finding of undesirability. We can envisage no circumstances in which, upon such showing and finding, Congress would have balked at deportation. In the first place, a naturalized citizen normally does not anticipate that his citizenship at the time he commits a crime will immunize him from criminal prosecution. Certainly, a citizen is no more free to commit a crime of espionage than an alien; that being so, petitioner or any other naturalized citizen did not, and could not, place such reliance on his ostensible citizenship as to warrant the implication of any kind of estoppel which would bar his deportation when he is denaturalized. Secondly, if there should be any seeming hardship because of the lapse of time between the commission of the offense and the deportation, the hardship is attributable to the absence of any time limitation upon deportation proceedings for certain offenses

and may be present in the case of aliens who never became citizens as much as in the case of aliens who once held certificates of naturalization. "No time limitation is imposed upon proceedings under the Act of May 10, 1920." *Mahler* v. *Eby*, 264 U. S. at 46. There is no sound reason for a distinction between aliens who have lived in this country for many years and are subject to deportation for offenses committed some time ago and persons who, after committing the crimes, either relinquish their citizenship voluntarily or have it taken from them because of illegality or fraud.

If there are grounds for alleviation, for allowing one who has been convicted of a specified crime to remain in this country, the Act of May 10, 1920, *supra*, pp. 2-3, leaves room for administrative dispensations. For, under that Act, the alien must be found to be an "undesirable resident" before he can be deported.

The fact that an alien who committed a deportable offense while naturalized would not have been deportable at the time of his conviction affords no legal basis for holding that he may not be deported upon his denaturalization. When his citizenship is cancelled, he stands on the same footing as any other alien who committed the offense and, like him, must meet the test of present desirability. Cf. *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 426, in which the Court said: "It may be true that if Volpe had remained within the United States, he could not have been expelled

because of his conviction of crime in 1925, more than five years after his original entry; but it does not follow that after he voluntarily departed he had the right of reentry."

Except for the requirement that the alien be found to be an undesirable resident (a qualification that was apparently inserted primarily for alien enemy internees (cf. *Mahler* v. *Eby*, 264 U. S. 32, 42)), the Act of May 10, 1920 was not designed to be more restrictive than the general deportation statute of February 5, 1917, which provides, *inter alia*, for the deportation of aliens "more than once" sentenced on account of crimes involving moral turpitude.[8] If petitioner's argument as to the limited scope of the 1920 statute is valid, it would apply with equal force to this part of the 1917 statute. It would mean, therefore, that if an alien obtained his naturalization by fraud and during most of his subsequent stay in this country was imprisoned for repeated crimes (cf. *Fong Haw Tan* v. *Phelan*, 333 U. S. 6), after which he was denaturalized, he, as an alien, could not be deported

[8] The 1917 deportation statute (Act of February 5, 1917, c. 29, § 19, 39 Stat. 889, 8 U.S.C. 155) provided for the deportation of undesirable aliens generally, including "any alien who, is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry." The 1920 statute avoided the bar of the five-year period, as well as any question whether violations of the wartime acts involved moral turpitude.

under the 1917 act until the country shall have suffered the commission of at least two additional crimes. The implausibility of such a result serves to reinforce our argument that the primary thrust of the statute is toward ridding the nation of undesirable aliens, and it is immaterial whether their undesirability is reflected in conduct before or after their denaturalization.

B. The conclusion that petitioner is subject to deportation may be reached by another route—that taken by the Court of Appeals in the *Eichenlaub* case (No. 3, this Term). The judgment by which petitioner was denaturalized determined that he was not qualified for naturalization at the time of its procurement and that the certificate of naturalization was void. Petitioner was entitled to become a citizen only upon strict compliance with the requirements imposed by Congress. Denaturalization results in "the annulment, by appropriate judicial proceedings, of merely colorable letters of citizenship, to which their possessors never were lawfully entitled." *Luria* v. *United States*, 231 U. S. 9, 24; cf. *Johannessen* v. *United States*, 225 U. S. 227. Consequently, even if the Act of May 10, 1920, be construed to embody a requirement that the alien sought to be deported must have been an alien at the time of his conviction, we submit that the requirement is met in this case since the denaturalization of petitioner operated *ab initio* to deprive him of any claim to citizenship.

Support for this view may be found in the analogous effect of denaturalization upon derivative rights of citizenship. The rights of all persons claiming citizenship by virtue of the naturalization of another are vitiated *ab initio* by the denaturalization of the latter since "the certificate of naturalization was simply a paper fraud and conferred at the time of its grant no rights whatever upon * * * [the applicant]." *Rosenberg* v. *United States*, 60 F. 2d 475, 476 (C.A. 3), certiorari denied, 287 U. S. 645. Cf. *United States* v. *Schlotfeldt*, 136 F. 2d 935, 939-940 (C.A. 7), certiorari denied *sub nom. Krause* v. *United States*, 327 U. S. 781; *Battaglino* v. *Marshall*, 172 F. 2d 979, 981 (C.A. 2), certiorari denied, October 10, 1949, No. 91. In Section 338(d) of the Nationality Act of 1940 (54 Stat. 1159, 8 U.S.C. 738 (d)),[9] Congress changed the effect of cancellation of a certificate for *presumptive* fraud upon those claiming derivatively under the certificate but it expressly retained the effect of a cancellation for *actual* fraud. Thus any rights others may have claimed by virtue of petitioner's naturali-

[9] "The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 338 shall not, where such action takes place after the effective date of this Act, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or available to a wife or minor child of the naturalized person had such naturalization not been revoked, but the citizenship and any such right or privilege of such wife or minor child shall be deemed valid to the extent that it shall not be affected by such revocation: *Provided*, That this subsection shall not apply in any case where the revocation and setting aside of the order was the result of actual fraud."

zation were lost *ab initio* upon his denaturalization for fraud, since, in legal contemplation, he was never a citizen. Consistency with this rationale warrants the view that petitioner's ostensible naturalization was a nullity and, therefore, he was an alien at the time of his conviction in 1941.

Petitioner's contention (Br. 17-18) that a decree of naturalization may not be attacked collaterally is beside the point. No attempt has been made here to attack the judgment of naturalization. It was attacked *directly* in the denaturalization proceeding which resulted, we maintain, in rendering him an alien at all times.

Petitioner relies upon *Johannessen* v. *United States*, 225 U. S. 227, for support for his contention that the order of denaturalization did not operate retroactively to make him an alien at the time of his conviction. But the *Johannessen* decision is consistent with our position. The Court held in that case that although the denaturalization provisions of the Act of 1906 had retrospective effect (so as to effect the cancellation of a naturalization certificate procured fourteen years before its enactment), the Act was not void as an *ex post facto* law since it imposed "no new penalty upon the wrongdoer" but merely provided that "he shall be deprived of a privilege that was never rightfully his." To the same effect, petitioner's denaturalization did not impose any additional punishment for the crime of which he was convicted in 1941. It established merely that he had never validly procured

citizenship and hence was an alien at that time. His deportation flows, not from the order of denaturalization, but from the deportation statute, which is applicable without distinction to aliens who fraudulently procured naturalization and to those who never instituted naturalization proceedings. As the Court observed in *Mahler* v. *Eby*, 264 U. S. 32, 39:

> Congress by the Act of 1920 was not increasing the punishment for the crimes of which petitioners had been convicted, by requiring their deportation if found undesirable residents. It was, in the exercise of its unquestioned right, only seeking to rid the country of persons who had shown by their career that their continued presence here would not make for the safety or welfare of society.

Cf. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 730.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.[10]

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[10] In the event of a reversal of the judgment, we suggest that the case be remanded to determine whether petitioner is removable as a "dangerous alien enemy" under 50 U.S.C. 21. See p. 4, *supra*.

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